Canadian Grain Commission | Commission canadienne des grains

Proposals to license producer railway car loading facilities, agents, and feed mills

Canadian Grain Commission

April 19, 2016

Canada

About the Canadian Grain Commission

The Canadian Grain Commission is a federal government agency. We establish and maintain Canada's grain quality standards. Our programs result in shipments of Canadian grain that consistently meet contract specifications for quality, safety and quantity. We regulate the grain industry to protect producers' rights and ensure the integrity of grain transactions.

We administer and enforce the *Canada Grain Act* and the *Canada Grain Regulations*.

Table of contents

1. Introduction 4
2. Purpose of consultation document 4
3. Providing input 4
How to submit your input 5
How your input is used 5
4. Next steps 6
Part 1: Producer railway car loading facility licensing exemption 7
Background 7
Proposal for stakeholder input 9
Rationale for exemption removal 10
Part 2: Agent licensing exemption 11
Background 11
Proposal for stakeholder input 11
Rationale for exemption removal 12
Part 3: Feed mill licensing exemption 13
Background 13
Proposal for stakeholder input 14
Rationale for exemption removal 14
Annex A – Licensing Overview 15
Annex B – Current licensing requirements 16
Elevators in general 16
Primary elevators 16
Process elevators 17
Annex C – Glossary of terms 18

1. Introduction

The Canadian Grain Commission is reviewing licensing exemptions and proposing to license producer railway car loading facilities, agents acting on behalf of licensed companies, and feed mills.

2. Purpose of consultation document

The consultation document is divided into three parts, based on the type of licensing exemption:

Part 1 – Producer railway car loading facility licensing exemption
Part 2 – Agent licensing exemption
Part 3 – Feed mill licensing exemption

This document:

- Informs you, the stakeholder, that we propose to license producer railway car loading facilities, agents, and feed mills
- Provides the rationale for this proposal and relevant information
- Describes how you can participate in the consultation process
- Provides you with the opportunity to comment on this proposal and our recommended approach
- Explains how to submit input and how it may be used
- Provides information on next steps

3. Providing input

We value your input. You may give us input on any or all parts of this consultation document. You only have to give input on parts that are relevant to you. If you choose to give input on more than one part, please separate your input into the relevant parts.

We want to know your views on:

- The proposals to license producer railway car loading facilities, agents and feed mills as outlined in this document
- Licensing requirements for producer railway car loading facilities, agents and feed mills. Specifically, we would like your views on producer payment protection and any other new or existing requirements as it relates to these proposals. A list of current licensing requirements is provided in Annex B.
- Continued licensing exemptions, for small on-farm feed mills that would not be licensed based on the volume of grain they purchase from producers
- Whether 5,000 tonnes is the appropriate threshold to exempt small on-farm feed mills from licensing. If you believe it is not appropriate, please provide a suggested threshold with rationale.
- Any other information you feel is relevant

When you give your input, please consider these questions:

- What licensing requirements should be applicable to agents, producer railway car loading facilities or feed mills?
- How would the proposal affect you or the interests of the organization you represent?
- Is there an alternative approach that we have not considered that you would like to propose?

How to submit your input

You may submit input by email to discussions@grainscanada.gc.ca.

Alternatively, you may submit input by mail to the following address.

Consultations
Canadian Grain Commission
600-303 Main Street
Winnipeg, MB R3C 3G8

The comment period has been extended from June 3, 2016 to August 31, 2016

Responses must be received by midnight on August 31, 2016. You may submit input in English or French.

We recommend that you include the following information when you submit input:

- Your organization (if applicable)
- Your full name
- Your phone number
- Your complete mailing address or your email address

This document is also available on our website and on the Consulting with Canadians website. If you have any questions, please email us at discussions@grainscanada.gc.ca.

Thank you in advance for your contribution. You will receive acknowledgement of your written submission.

How your input is used

The Canadian Grain Commission will study your input while considering:

- Input received from other stakeholders on the same subject
- The legal or policy implications of your proposals, if applicable
- The cost of your proposals, as well as the source of funding, if applicable
- Consistency with broader Government of Canada policies and priorities

We are committed to an open and transparent process. We will summarize your input in a report; your input cannot be considered confidential. However, if you submit input as an individual and not as a representative of a business, group or organization, we will protect your name as required by the *Access to Information Act* and the *Privacy Act*.

4. Next steps

We will use stakeholder feedback to inform the decision-making process. This could include further consultation or a proposal, or both, to amend the *Canada Grain Regulations* or determine no further action is needed. We will notify stakeholders of any proposed changes to the *Canada Grain Regulations*. At such time, you would have an opportunity to provide further input on the regulatory proposal by making a submission during pre-publication in the *Canada Gazette*, Part I.

Changes could be implemented as early as August 1, 2017. We would contact affected companies with information about becoming licensed or exempted.

Part 1: Producer railway car loading facility licensing exemption

Background

Annex A provides an overview of our licensing program.

History of exemptions

A producer railway car loading facility is an operation where producers can load their grain, or have their grain loaded by someone else on their behalf, into railway cars allocated by the Canadian Grain Commission and forwarded by the railway to a terminal elevator, process elevator, or consignee of the producer's choice.

Producer railway car loading facilities meet the definition of a primary elevator as outlined in the *Canada Grain Act*. They are defined as "*an elevator the principal use of which is the receiving of grain directly from producers for storage or forwarding or both*". Since 2002, we have exempted producer railway car loading facilities from primary elevator licensing with annual orders pursuant to section 117 of the *Canada Grain Act*. The exemptions indicate that a licence is not required to maintain the quality, safe-keeping, and orderly and efficient handling of grain.

Between November 2001 and February 2002, we conducted a public consultation to determine if and how producer railway car loading facilities should be regulated.

The Canadian Grain Commission determined at the time that producer railway car loading facilities would continue to be exempt from licensing because Canada's grain quality assurance system would not be compromised for the following reasons:

- We inspected and weighed grain unloaded from every producer railway car at port position and, as a result, out of condition grain would be detected.
- Provisions in the *Canada Grain Act* enabled us to prohibit the movement of insect-infested grain by rail.

To ensure the grain quality assurance system would not be compromised, we imposed the following conditions on each exempted producer railway car loading facility in their exemption order:

a) The facility will only handle grain on behalf of producers which is intended to be loaded into producer railway cars.
b) The facility will have posted at all times a notice advising producers that the facility is not licensed under the *Canada Grain Act* and that the Canadian Grain Commission will not be involved in disputes between the facility and the producer other than disputes which arise at the port location.
c) The facility shall not purchase or sell grain.
d) The facility shall allow the Canadian Grain Commission access to its records.

Over the years, we have amended the first condition of the producer railway car loading facility exemption order. As a result, producer railway car loading facilities may facilitate the use of the leased car supply (railway cars owned by private companies). These cars are subject to all producer railway car allocation procedures and rules.

Grain industry changes affecting producer railway car loading facilities

The following changes have prompted a review of licensing exemptions for producer railway car loading facilities:

- An increase in the volume of producer deliveries to producer railway car loading facilities, and the use of producer railway car loading facilities by grain companies who now access leased cars at producer railway car loading facilities for their shipments. The increased use of producer railway car loading facilities has exacerbated the following gaps in oversight.
    - The Canadian Grain Commission is currently unable to capture data from producer railway car loading facilities, causing a gap in data published in statistical reports about the movement of grain in Canada.
    - Producers receive inconsistent treatment with respect to deliveries at producer railway car loading facilities compared to deliveries at licensed elevators. The Canadian Grain Commission has oversight of weighing equipment at licensed elevators and producers receive consistent delivery documentation with respect to grain type and weight. We do not have this oversight at producer railway car loading facilities, and producers do not receive consistent delivery documentation with respect to grain type and weight.
    - Producers receive inconsistent treatment from the Canadian Grain Commission with respect to disputes with producer railway car loading facilities compared to disputes with licensed elevators. Producers who deliver to licensed companies can avail themselves of Canadian Grain Commission dispute arbitration. Producers do not have access to this right when dealing with unlicensed companies such as producer railway car loading facilities.

- We do not have access to all sites where producers make deliveries. Producer railway car loading facilities represent a gap in our oversight of the grain handling process, which poses a risk to the grain quality assurance system with respect to grain safety.

Proposal for stakeholder input

Approach

We propose to license producer railway car loading facilities by ending the annual exemption orders. We would then begin the licensing process. Once licensed, producer railway car loading facilities would be subject to many of the operational and reporting requirements of currently licensed primary elevators, with some proposed exceptions. In order to manage these two sets of requirements, we propose creating a primary elevator licence subclass, along with any new requirements specific to producer railway car loading facilities, by regulation.

Proposed licensing requirements

Annex B gives a list of current licensing requirements. The Canadian Grain Commission proposes that producer railway car loading facilities would be subject to the standard licensing process, with the following exceptions.

Licensed producer car loading facilities would not be required to:

- Tender security such as a bond, letter of credit, or payables insurance policy in an amount determined by the Canadian Grain Commission to cover outstanding eligible liabilities to producers
- Submit the *Monthly Report of Licensee's Liabilities to Producers*
- Issue receipts to producers for grain delivered (elevator receipts and cash purchase tickets)
- Comply with a producer's request for a binding determination of grade and dockage by the Canadian Grain Commission
- Submit annual financial statements

These new conditions of licensing would be imposed:

- The facility will issue a document to record the receipt of grain by type and weight in a form acceptable by us.
- The facility will only handle grain received for discharge into a railway car.
- The facility will not deal in grain.
- The facility will not purchase grain from producers.

The Canadian Grain Commission does not require a new authority to license producer railway car loading facilities. We propose to create a licence subclass by regulation pursuant to section 43 of the *Canada Grain Act* in order to distinguish these types of facilities from current primary elevator licensees. This subclass is not essential to licensing producer railway car loading facilities; however, we are proposing it to make it clear to producers and grain industry stakeholders that producer payment protection is not available at these facilities as they do not purchase grain from producers.

This subclass would clarify to stakeholders that a producer railway car loading facility is distinct from a primary elevator in that the licensee does not have to post security with the Canadian Grain Commission and, therefore, no payment protection is available to producers.

Rationale for exemption removal

The Canadian Grain Commission has determined that the risk associated with continuing to exempt producer railway car loading facilities has increased, and that as a result we must take action to close the gap in regulatory oversight of these facilities. Continuing to exempt producer railway car loading facilities from regulatory oversight through licensing exemption orders could adversely affect the grain quality assurance system and producer protection.

We propose to license producer railway car loading facilities in order to address the following gaps in regulatory oversight:

- Collection and publication of grain handling information for these facilities in our statistical reports. Currently, we do not have data related to producer railway car loading facilities for our statistical reports. In *Grain Statistics Weekly* and *Grain Deliveries at Prairie Points*, producer deliveries to producer railway car loading facilities, and data for producer railway car deliveries and shipments are estimated based on number of railcars allocated multiplied by average of railcar unload weight in the previous crop year. We are seeking accurate data to provide a more complete picture of grain moving through these facilities.
- Access to producer railway car loading facilities for grain safety purposes. This includes the collection of samples and ability to take steps when necessary to mitigate any problems that may arise. An example of this would be issuing an order to comply with a requirement related to handling an infestation or the detection of treated seed in order to resolve the matter.
- Weighing equipment for producer railway car loading facilities that have such equipment on site is in compliance with Measurement Canada. The maintenance of weighing equipment is necessary for producers to receive consistent treatment with respect to documenting the weight of deliveries regardless of where they choose to deliver their grain.
- Access to dispute arbitration for producers. An example of this would be resolving a dispute related to the weight of a delivery.

Part 2: Agent licensing exemption

Background

Annex A provides an overview of our licensing program.

An agent is a company that acts on behalf of a licensed company. Currently, the Canadian Grain Commission exempts agents with elevator facilities and agents without elevator facilities from licensing. We are limiting the scope of this proposal to licensing agents with elevator facilities.

The exemptions indicate that grain is not purchased directly from western grain producers and a licence is not required to maintain the quality, safe-keeping, and orderly and efficient handling of grain.

In 2009, we undertook a licensing review to ensure we were issuing the proper class of licence to licensees. This included the following licence classes: Terminal Elevator, Transfer Elevator, Process Elevator, Primary Elevator, and Grain Dealer. Our review also included a review of licensee facilities and the activities undertaken by each licensee. Prior to that time, we were aware of few licensees using agents to receive grain on their behalf. At that time, we discovered that the industry has evolved and the use of agents with elevator facilities has increased.

Proposal for stakeholder input

Approach

We propose to license agents with elevator facilities. We would do this by removing the following exemption in the *Canada Grain Regulations*:

Section 15(1)(d)

> *any elevator, if the operator of the elevator operated the elevator as an agent or mandatary for licensees, the licensees provide security to the Commission for all grain received into the elevator and the operator allows the Commission access to the operator's records for the elevator.*

Proposed licensing requirements

We would require that agents with elevator facilities be licensed as a primary elevator or process elevator, depending on the nature of their business. We would determine this based on information provided by the company.

All current operational and reporting licence requirements would be applied. Annex B provides a list of current licensing requirements.

Companies that do not make purchases from producers would post a security amount to reflect their low risk to producers, as is currently the case with licensees that have the capacity to incur producer liabilities, but do not make purchases from producers.

Rationale for exemption removal

The Canadian Grain Commission has determined that the risk associated with continuing to exempt agents has increased as a result of their increased presence in the grain handling system. As a result, we are proposing to take action to close the gap in regulatory oversight of these facilities. Continuing to exempt agents from regulatory oversight could adversely affect the grain quality assurance system.

We propose to license agents in order to address the following gaps in regulatory oversight:

- Access to agents for grain safety purposes. This includes the maintenance of sampling equipment, the collection of samples, and powers to take steps when necessary to mitigate any problems that may arise. An example of this would be issuing an order to comply with a requirement.
- The proper maintenance of weighing equipment. The maintenance of weighing equipment is necessary for producers to receive consistent treatment with respect to documenting the weight of deliveries regardless of where they choose to deliver their grain.
- Collecting and publishing grain handling information for these facilities in our statistical reports. Currently, we do not have data related to agents in our statistical reports.
- Consistent delivery of producer payment protection. Agents have the capacity to incur producer liabilities, and by regulating these companies, we would be better able to monitor their purchases and better assess the risk of payment failure. Agents that incur producer liabilities would be required to tender security to us to cover the potential risk of payment failure. Agents that do not incur producer liabilities would be handled in a fairer and more consistent manner similar to current licensees that do not incur producer liabilities where security may be set at a low amount or zero.
- Access to Canadian Grain Commission dispute arbitration for producers
- Access to binding determination of grade and dockage for producers who sell to an agent licensed as a primary elevator

Part 3: Feed mill licensing exemption

Background

Annex A provides an overview of our licensing program.

Currently, the Canadian Grain Commission exempts feed mills from licensing. The exemptions indicate that a licence is not required to maintain the quality, safe-keeping, and orderly and efficient handling of grain.

Some feed mills have experienced financial difficulties in recent years, resulting in producers not being paid for their grain deliveries. In 2012, Puratone and Big Sky Farms declared bankruptcy, largely due to increased animal feed prices and depressed hog prices. Both were involved in hog production in addition to operating feed mills.

As feed mills, Puratone and Big Sky Farms were not required to tender security to cover outstanding liabilities to producers. In both cases, a large portion of the unsecured creditors were grain farmers who had sold grain to be used in these feed mill operations. These bankruptcies left some grain producers owed money with little recourse. These bankruptcies renewed calls to the Canadian Grain Commission and government to review the feed mill licensing exemption.

To address this issue, we held a consultation in early 2015 to seek input on a proposal to license feed mills. We sought feedback and direction from feed mills, grain producers, current licensees, and other industry stakeholders on the general concept of licensing feed mills. We also sought input on the development of their licensing requirements.

We received 43 formal submissions from a diverse range of stakeholders, including 53 feed mills, commodity and producer organizations. Major feedback themes included: the purpose and benefits of licensing; potential effects on the feed sector and producers; and proposed recommendations on licensing requirements.

With the exception of most commercial feed mills, the majority of respondents supported licensing commercial feed mills, recognizing that on-farm feed mills operate differently. Respondents noted that licensing would create more stability in the feed sector and give grain producers confidence when they deliver their grain to feed mills. Producers and certain feed mills see payment protection as advantageous.

Feed mills were concerned about the cost of licensing and additional fees and reporting requirements that would be put on the industry, given that they are already subject to licensing and compliance requirements by the Canadian Food Inspection Agency.

We are now seeking additional stakeholder input on a proposal to license feed mills that purchase more than a certain threshold of grain from producers.

Proposal for stakeholder input

Approach

We propose to license some feed mills. We would do this by modifying the following exemption in the *Canadian Grain Regulations*:

Section 15(1) (a)

> *An elevator constructed for the purpose of handling and storing grain as part of the operation of a feed mill;*

We propose to license feed mills that purchase more than 5,000 tonnes of grain annually from producers. Feed mills that purchase less than 5,000 tonnes of grain annually from producers (based on a five-year average) would be exempt. This limit is based on factors such as licensing thresholds in other regulatory jurisdictions such as Ontario and Quebec, average farm size by livestock type, and annual feed consumption on an average farm.

In order to manage the proposed licensing threshold for feed mills, we propose the creation of a process elevator licence subclass for feed mills by regulation.

Proposed licensing requirements

We would require that feed mills to be licensed as a process elevator. They would be subject to the operational and reporting requirements of process elevators. Annex B gives a list of current licensing requirements.

Rationale for exemption removal

We have determined that the risk associated with continuing to exempt feed mills that purchase more than 5,000 tonnes of grain annually from producers has increased. As a result we are proposing to take action to close the gap in regulatory oversight of these facilities. Continuing to exempt feed mills from regulatory oversight could adversely affect the opportunity for producers to be compensated in the event of the failure or bankruptcy of a feed mill company.

We propose to license feed mills that purchase more than 5,000 tonnes of grain annually in order to address the following gaps in regulatory oversight:

- Delivery of producer payment protection. These feed mills incur more producer liabilities, which poses an increased risk to producers. By regulating these companies, we would be able to offer payment protection to producers delivering to licensed feed mills.
- The proper maintenance of weighing equipment. Producers would receive consistent treatment with respect to receipts, which are necessary to deliver payment protection.
- Collection and publication of grain handling information for these facilities in our statistical reports. Currently, we do not have data related to feed mills in our statistical reports.
- Access to Canadian Grain Commission dispute arbitration for producers.

Annex A – Licensing Overview

Licensing is a function of the Canadian Grain Commission's Producer Protection Program, which has two main objectives:

1. **Producer protection**: Producers have rights as set out in the *Canada Grain Act*, including:
   - Lodging informal complaints with the Canadian Grain Commission about a licensee
   - Formal dispute arbitration
   - Access to a binding determination of grade and dockage
   - Payment protection for their grain deliveries

2. **Supporting the grain quality assurance system**: The grain quality assurance system is the framework for establishing and maintaining Canadian grain quality and quantity assurance standards. Canada's grain quality assurance system consistently provides domestic and international customers with the quality and quantity of grain they require year after year. The Canadian Grain Commission is responsible for regulating licensed companies to uphold this system. For example, we may order a licensed elevator to fumigate its bins if it ships infested grain. No such power exists for unlicensed companies.

We collect statistical information about licensed grain companies, and publish this data online. Licensed primary and process grain elevators must submit reports to the Canadian Grain Commission about the grain type and quantity for deliveries they receive and shipments they make each week. We publish this grain handling information in aggregate by province and by grain type in *Grain Statistics Weekly* and annually in *Grain Deliveries at Prairie Points*. These documents provide information on the supply and disposition of grain in the commercial licensed handling system.

We also collect data about elevator locations, companies and capacities for each licensed elevator in Canada. We publish this information annually in *Grain Elevators in Canada*. In addition, we collect the maximum tariffs, or fees, that licensed grain companies charge for elevating, cleaning, drying and storing grain, and publish an *Elevator Tariff Summary* to inform stakeholders of these costs in a transparent manner.

If a grain handling operation meets the definition of an elevator or grain dealer under the *Canada Grain Act*, it must be licensed or exempted by the Canadian Grain Commission. Annex B gives a list of current licensing requirements. Currently, we grant exemptions for facilities if one or both of the following conditions apply:

- The facility does not purchase grain from producers.
- Licensing a company or class of companies is not required to maintain the quality, safe-keeping, and orderly and efficient handling of Canadian grain. In other words, an exemption does not pose a significant risk to the grain quality assurance system.

Annex B – Current licensing requirements

Elevators in general

All licensed elevator operators are required to:

- Post the Canadian Grain Commission licence in a conspicuous location in the elevator building
- Install and maintain equipment and facilities to ensure the efficient and accurate weighing, sampling, inspection, grading, drying and cleaning, and accommodation of all grain received or discharged
- Store all grain received in an elevator building described in the licence application. An elevator can also store grain on the ground if a written request is submitted to the Canadian Grain Commission, advising the kind of grain to be stored on the ground and the date grain to be stored on the ground is to be received. Upon delivery, an elevator receipt, grain receipt or cash purchase ticket must be issued, and the elevator has the same responsibility for the grain as it has for grain stored in the elevator building.
- Keep elevator buildings and associated equipment in good repair
- Keep sampling equipment and surrounding areas clean
- Provide immediate written notification to the Canadian Grain Commission of the following:
    - Functional alterations to the elevator or to grain flows, sampling, control or any other equipment (within 15 days of plans becoming available)
    - Damage or destruction of any elevator building described in the application
    - Damage, destruction or removal of any equipment required by the Canadian Grain Commission
    - Damage or destruction of grain stored in any elevator building described in the application

Primary elevators

In addition to complying with the requirements of elevators in general, primary elevators have certain specific licensing and reporting obligations:

- Tender security to cover outstanding eligible liabilities to producers
- Issuing receipts to producers for grain delivered in accordance with Canadian Grain Commission requirements
- Take a representative sample from each load delivered
- Comply with a producer's request for a binding determination of grade and dockage by the Canadian Grain Commission
- Allow producers who deliver grain to verify scale weight of grain while it is being weighed
- Provide documentation to ensure Measurement Canada's approval of their weigh scales
- Provide the following reports:
    - Monthly report of licensee's liabilities to producers
    - Weekly report of operations
    - Annual report of net handlings
    - Annual report of tariff schedule
- Submit an annual licensing application with fees ($3,420/year in 2015-16)

Process elevators

In addition to complying with the requirements of elevators in general, process elevators have certain specific licensing and reporting obligations:

- Tender security to cover outstanding eligible liabilities to producers
- Issuing receipts to producers for grain delivered in accordance with Canadian Grain Commission requirements
- Provide documentation to ensure Measurement Canada's approval of their weigh scales
- Provide the following reports:
    - Monthly report of licensee's liabilities to producers
    - Weekly report of operations
    - Annual report of tariff schedule
- Submit an annual licensing application with fees ($3,420/year in 2015-16)

Annex C – Glossary of terms

Agent	A company that acts on behalf of a licensed company.
Elevator	any premises in the Western Division, (i) into which grain may be received or out of which grain may be discharged directly from or to railway cars or ships, (ii) constructed for the purpose of handling and storing grain received directly from producers, otherwise than as a part of the farming operation of a particular producer, and into which grain may be received, at which grain may be weighed, elevated and stored and out of which grain may be discharged, or (iii) constructed for the purpose of handling and storing grain as part of the operation of a flour mill, feed mill, seed cleaning plant, malt house, distillery, grain oil extraction plant or other grain processing plant, and into which grain may be received, at which grain may be weighed, elevated and stored and out of which grain may be discharged for processing or otherwise.
Feed	Any substance or mixture of substances for consumption by livestock and contribute energy and or nutrients to the animal's diet.
Feed mill	An operation that produces or manufactures feed for livestock or poultry consumption.
Producer railway car loading facility	An operation where producers can load their grain, or have their grain loaded by someone else on their behalf, into railway cars allocated by the Canadian Grain Commission and forwarded by the railway to a terminal elevator, process elevator, or consignee of their choice.